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# **RULE**

## **DEPARTMENT OF LABOR OFFICE OF WORKERS' COMPENSATION**

### **Title 40 Labor and Employment Part I. Workers' Compensation Administration**

#### **Chapter 21. Hearing Rules**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **§2101. Purpose**

The purpose of these Rules is to govern the practice and procedures before the Workers' Compensation Court which is a statewide court having jurisdiction of claims for workers' compensation benefits, the controversion of entitlement to benefits and other relief under the workers' compensation act. These rules are designed to facilitate the equitable, expeditious and simple resolution of workers' compensation disputed claims filed with the Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March 1993).

##### **§2103. Organization**

The Workers' Compensation Court shall be comprised of nine districts numbered 1 through 9:

##### **District 1 East comprised of the following parishes:**

Bienville, Caldwell, Catahoula, Claiborne, Concordia, East Carroll, Franklin, Grant, Jackson, Lasalle, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll, Winn

##### **District 1 West comprised of the following parishes:**

Bossier, Caddo, Desoto, Natchitoches, Red River, Sabine, Vernon, Webster

##### **District 2 comprised of the following parishes:**

Avoyelles, Iberville, Pointe Coupee, Rapides, St. Landry, West Baton Rouge

**District 3 comprised of the following parishes:**

Allen, Beauregard, Calcasieu, Cameron, Evangeline, Jefferson Davis

**District 4 comprised of the following parishes:**

Acadia, Lafayette, Vermilion

**District 5 comprised of the following parishes:**

Ascension, Assumption, East Baton Rouge, East Feliciana, St. James,  
West Feliciana

**District 6 comprised of the following parishes:**

Livingston, St. Helena, St. John the Baptist, St. Tammany,  
Tangipahoa, Washington

**District 7 comprised of the following parishes:**

Jefferson, Plaquemines, St. Bernard

**District 8 comprised of the following parishes:**

Orleans

**District 9 comprised of the following parishes:**

Iberia, Lafourche, St. Charles, St. Martin,  
St. Mary, Terrebonne

The current district office addresses are found in Appendix Number 1.

A map of the state reflecting the districts are found in Appendix Number  
2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of  
Workers' Compensation LR 19:350 (March 1993).

**§2105. Other Applicable Rules**

Any matter of practice or procedure not delineated herein and not in  
conflict with either the Workers' Compensation Act or these rules will be guided  
by practice and procedure followed in the district courts of this state as well  
as the practice and procedures provided for in the Louisiana Code of Civil  
Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1

HISTORICAL NOTE: Adopted by the Department of Labor, Office of Workers' Compensation Administration. L.R. 16:297, (April, 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, L.R. 17:262, (March, 1991). Amended by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2107. Workers' Compensation Judges**

The Workers' Compensation Judges are subject to the Code of Judicial Conduct, Civil Service Rules and Louisiana State Code of Ethics. The Workers' Compensation Judges shall have discretionary authority to use necessary sanctions, including dismissal, in order to control the orderly process of the hearing and enforce these rules and the orders of the judge made pursuant thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March 1993).

#### **§2109. Security**

A. The purpose of this rule is to minimize interference with and disruptions of the business of the Workers' Compensation Court and to provide effective security in the buildings wherein the proceedings governed by these rules are held. These buildings are hereinafter collectively referred to as "the premises."

B. The term "Bailiff" shall refer to the Deputy Sheriff assigned to maintain order at each Workers' Compensation Court.

C. The Bailiff may in his discretion inspect any object carried by any person entering the premises. No one shall enter or remain in the premises without submitting to such an inspection if requested to do so.

D. The Bailiff may in his discretion search the person of anyone entering the premises or any space in it. Anyone who refuses to permit such a search shall be denied entry.

E. Unless authorized by the Workers' Compensation Court, no camera, recording equipment or other type of electrical or electronic device shall be brought into the premises.

F. No person shall be admitted to or allowed to remain in the premises with any object that might be employed as a weapon unless he or she has been

authorized in writing by a Workers' Compensation Judge to do so, or unless he or she is a publicly employed law enforcement officer.

G. The Bailiff shall enforce the whole of this rule, and pursuant to his authority as a Deputy Sheriff, shall be authorized in his discretion to take any legal action necessary to preserve the order and security of the premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.2

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March 1993).

#### **§2111. Workers' Compensation Courtroom Decorum and Conduct of Attorneys**

A. The following shall be observed in the opening of Workers' Compensation Court and general courtroom decorum:

1. the bailiff shall open each session of Workers' Compensation Court with an appropriate recitation and order.

2. No tobacco in any form will be permitted at any time.

3. No food or beverage shall be brought into the courtroom.

4. No reading of any material (except as necessary for the trial of any case) will be permitted while Workers' Compensation Court is in session.

B. As officers of the Workers' Compensation Court, attorneys are reminded of their obligations to assist in maintaining the dignity of the court. All attorneys and other officers of the court shall dress appropriately. For gentlemen, this means a coat and tie. For ladies, this means appropriate professional attire. All attorneys shall be respectful to the court and to each other at all times.

C. When private conversation or conference between attorneys or people in attendance becomes necessary during any court session, the parties shall leave the courtroom. In the event discussion between counsel to the proceedings is necessary, the court may grant recesses as needed.

D. Attorneys in argument shall not interrupt one another, and shall address all remarks, objections, and comments to the bench, never to opposing counsel. Impromptu argument or discussion between counsel(s) will not be permitted.

E. Ex parte communication with the Workers' Compensation Judge, verbal or written, designed to influence his action in any case is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.2.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March 1993).

**§2113. Forms - Preparation and Adoption - Use**

The Office of Workers' Compensation shall prepare and adopt such forms for use in matters before the Office of Workers' Compensation as it may deem necessary or advisable. Whenever Office of Workers' Compensation forms are prescribed and are applicable, they shall be used. A photo ready copy of any form may be procured upon request to any District Office or the Main Office and may be reproduced by the parties as needed.

The following forms have been adopted by the Office of Workers' Compensation for use in matters before the Workers' Compensation Judges:

Form LDOL-WC-1004 -	Request for Social Security Disability Information and Calculation of Reverse Offset
Form LDOL-WC-1005 -	Motion and Order for Recognition of Right to Social Security Reverse Offset
Form LDOL-WC-1006 -	Subpoena for Social Security Medical Information
Form LDOL-WC-1007 -	Employer's Report of Occupational Injury or Disease
Form LDOL-WC-1008 -	Disputed Claim Form
Form LDOL-WC-1011 -	Settlement
Form LDOL-WC-1015 -	Request for Independent Medical Examination

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1306, 1310, 1310.1, and 1310.3.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation, promulgated LR 16:297 (April 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262 (March 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March, 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

**§2115. District Clerk - Records - Withdrawal**

Each workers' compensation district and the Records Management division shall have a clerk(s), who shall be an ex officio notary public. The clerk(s)

shall be the custodian of all records and documents for that district or the Office and no such records, documents, or paper shall be withdrawn.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1293, 1310.1, and 1310.2.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March 1993).

#### **§2117. Enumeration of Fees in Workers' Compensation Disputes**

The clerks for the Office of Workers' Compensation shall be entitled to demand and receive the following fees in Workers' Compensation disputes:

- 1) Filing of 1008 or 1011 - \$30.00
- 2) Service of Process on Secretary of State - \$25.00
- 3) Copies of any paper in any suit record \$0.25 per page
- 4) For each certification - \$1.00
- 5) Facsimile transmission - \$5.00
- 6) Cost of preparation of record for appeal as provided in

Estimated of Final Invoice for Appeals found in Appendix 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.11, and 1310.12.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation LR 16:297, (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation LR 17:262 (March, 1991), amended by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2119. Cost**

A. Costs shall include a \$30.00 filing fee, and may include expert witness fees, court reporter fees, and costs of depositions and such other costs allowed by law, at the Workers' Compensation Judge's discretion.

B. The costs of preparing an appeal shall be initially sustained by the appellant. In the case of pauper, the costs incurred by the Office of Workers' Compensation in preparing the transcript shall be sustained by the Office of Workers' Compensation only where the pauper is the losing party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.9, 1310.11, and 1317.



HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation LR 16:297, (April 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation LR 17:262 (March, 1991), amended by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2121. Format of Documents - Signatures - Certificate of Service**

Any pleading or other document submitted to the Director or to any Workers' Compensation Judge shall be typed or printed legibly on 8 1/2 x 11" paper and shall bear the name and signature of the person who prepared it, the firm name, if applicable, the complete address including the zip code, the telephone number, including the area code and the case number, if one has been assigned to the claim. All attorneys shall note their bar roll number on all documents and correspondence.

Copies of all correspondence and any other instruments sent to the Office of Workers' Compensation shall be mailed by the party originating the correspondence to all other parties of record in the case and a certificate to that effect shall be attached to the original and filed with the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.2.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration. L.R. 16:297, (April 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, L.R. 17:262, (March, 1991), amended by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR :

#### **SUBCHAPTER B. DISPUTED CLAIMS**

#### **§2123. Commencement of Claim; Place of Filing**

A. "Form LDOL-WC-1008" shall be the form to initiate a disputed claim for benefits, the controversion of entitlement to benefits or other relief, as required by LSA-R.S. 23:1310.3 and 23:1209. The form must be substantially complete to be accepted as an official filing. All documents not in compliance with this rule shall be returned unfiled.

B. In order to initiate a claim, the disputed claim form should be sent to a district office of proper venue pursuant to R.S. 23:1310.4 or may be sent to the Director of the Workers' Compensation Administration, who will forward it to a district of proper venue.

C. If the office ascertains that a claim is sent to a district of improper venue, it shall transfer the claim to a district of proper venue.

AUTHORITY NOTE: Promulgated in accordance with R.S.23:1310.1, 1310.4, 1311 and 1314.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297 (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration LR 17:262, (March, 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2125. Prescription**

For purposes of R.S. 23:1209, a claim, accepted as substantially complete and timely filed in any district office or in the office of the director, shall interrupt prescription.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1209, 1310.1, 1311 and 1314.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2127. Date of Filing - Stamping - Time - Facsimile Transmission**

Upon receipt in the office, the pleading or forms and any other correspondence shall be stamped with the date of receipt. Any paper may be filed by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received. The facsimile when filed has the same force and effect as the original.

Within five days, exclusive of legal holidays, after the district office or the records management division have received the transmission, the party filing the document shall forward the following to the district office or records manager:

- (1) The original signed document;
- (2) The applicable filing fee, if any; and
- (3) A transmission fee of \$5.00 (five dollars),

If the party fails to comply with the requirements of the above paragraph, the facsimile filing shall have no force or effect.

Time limits shall be calculated from the date of mailing as shown by the post mark, other proof of mailing, or the date a facsimile transmission is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310, 1310.1 and 1310.3.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262 (March, 1991), amended by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2129. Informal Mediation Conference**

A. Within 15 days of receipt in a proper district but with not less than 5 days notice to the parties unless the parties agree to meet at an earlier date, the district office shall set the matter for an informal mediation conference with a workers' compensation Dispute Resolution Mediator. The notice may be given by telephone, but shall be confirmed in written form. The notice shall indicate the date, time, and place of the conference.

B. The purpose of the informal mediation conference shall be to mediate and encourage resolution of the dispute. As such the conference is designed for employees, employers and/or adjustors or claims managers. Within 24 hours of receipt of a notice of informal mediation conference, the employer shall be obligated to notify his workers' compensation insurer or adjuster, in case of a self-insured of the date, time and place of the hearing.

C. If available the parties shall bring two (2) legible copies of the following: LDOL-WC-Form 1007, current medical bills and reports, information on workers' compensation benefits previously paid and wage information. If the employer has failed to timely file a completed 1007, the employer shall be assessed a fine in accordance with Rule 107. Nothing contained in the Form LDOL-WC-1007 shall be considered as an admission of any fact contained therein.

D. No stenographic report shall be taken at the informal mediation conference and no witnesses shall be called. All statements made at the mediation conference shall be privileged and shall not be admissible in any subsequent hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2, 1310.3 and 1310.4.

HISTORICAL NOTE: Adopted by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297 (April, 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation Administration L.R. 19:

**§2131. Conclusion of Informal Mediation Conference**

A. When it becomes apparent during the course of a conference that agreement on all issues cannot be reached, the workers' compensation Dispute Resolution Mediator shall issue a report stating the result of the conference and requiring that citations be issued immediately to all defendants. The report shall be issued to the parties immediately following the conference or mailed within (5) days thereof.

B. If in the mediator's judgment a follow-up mediation conference would be beneficial and would bring the parties closer to a resolution of their dispute, a date shall be set for the conference. The scheduling of an additional conference(s) shall not delay issuance of citation to the defendant(s).

C. Following a mediation conference at which agreement is reached on all issues in dispute, a report embodying the agreement shall be issued to the parties and the Workers' Compensation Judge within five (5) days thereof. The report may require dismissal of the claim or the filing of an LDOL Form 1011 within a specified period of time. Failure to timely comply with the agreement will result in issuance of citations to all defendants. When all issues in dispute are resolved at the first mediation conference, the Office of Workers' Compensation shall waive payment of the \$30.00 filing fee.

D. Service of Process. If any proper party defendant is present or represented at the informal mediation conference, formal citation and service of process shall be made upon that defendant or its representative at that time. Citation and service of process shall be proper upon any representative of the defendant appearing at the mediation conference. The affidavit of the mediator in any subsequent proceeding shall be prima facie evidence that service has been made in accordance with this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2, and 1310.3.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation, promulgated LR 16:297 (April 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262 (March 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March, 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

**§2133. Failure to Attend Informal Mediation Conference**

If any party fails to attend in informal mediation conference after due notice, the Workers' Compensation Judge, upon report from the Workers' Compensation Mediator, shall fine the delinquent party an amount not to exceed \$500.00, which shall be payable to the Office of Workers' Compensation Administrative Fund. In addition, the Workers' Compensation Judge may assess against the party failing to attend, costs and reasonable attorney's fees incurred by any other party in connection with the conference. If the plaintiff fails to appear after due notice, the Workers' Compensation Judge may dismiss the plaintiff's case without prejudice. Any appeal from penalties assessed under this section shall be made in writing to the Workers' Compensation Judge and shall be referred to the merits of the dispute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2, and 1310.3.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation, promulgated LR 16:297 (April 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262 (March 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March, 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994), LR 20:1455 (December 1994).

**SUBCHAPTER C. ANSWERS AND HEARINGS****§2135. Answers and Hearings**

The defendant must file an answer in the assigned district office within fifteen (15) days from the date of receipt of the petition by certified mail or service thereof in any other manner provided by law, and must certify that a copy of the answer was sent to the claimant. An answer may be amended prior to the pretrial conference as a matter of right, and thereafter only with approval of the Workers' Compensation Judge.

Upon receipt of the answer, the Workers' Compensation Judge shall set the matter for pretrial conference within 60 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2 and 1310.3.

HISTORICAL NOTE: Adopted by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297 (April, 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation

Administration, LR 17:262, (March, 1991), amended by Louisiana Department of Labor, Office of Workers Compensation Administration, LR 19:350 (March 1993).

#### **§2137. Appearance of Parties**

In all hearings before the Workers' Compensation Judge the parties may appear in person or by counsel licensed to practice law in the State of Louisiana. Corporate entities, unincorporated associations, insurance companies and own-risk carrier shall appear only by such counsel. Counsel who will appear before the Workers' Compensation Judge on behalf of a party in any proceeding shall notify the Office of Workers' Compensation of their appearance by filing an entry of appearance or other appropriate pleading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2 and 1317.

HISTORICAL NOTE: Adopted by Louisiana Department of Labor, Office of Workers' Compensation Administration, L.R. 16:297, (April, 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, L.R. 17:262, (March, 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2139. Dismissal for Failure to Prosecute**

A claim may be dismissed by the Workers' Compensation Court for lack of prosecution for the following reasons:

- 1) Where no service of process has been made within sixty (60) days after issuance of citation;
- 2) Where no responsive pleadings have been filed or no default has been entered within sixty (60) days after service of process;
- 3) Where a cause has been pending six (6) months without proceedings being taken within such period. This provision shall not apply if the cause is awaiting action by the Workers' Compensation Court; or
- 4) Where a party fails to appear for a properly noticed conference or trial.

Dismissal under this Rule shall be without prejudice. The Order of Dismissal shall allow for reinstatement of the action within thirty (30) days for good cause shown.

The failure of an attorney or pro se litigant to keep the Workers' Compensation Court apprised of an address change may be considered cause for dismissal for failure to prosecute when a notice is returned to a party or the

Workers' Compensation Court for the reason of an incorrect address and no correction is made to the address for a period of thirty (30) days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.2.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **SUBCHAPTER D. DISCOVERY AND EVIDENCE**

##### **§2141. Discovery and Attendance of Witnesses**

The hearing process shall be available to aid any party in pursuit of discovery and to compel attendance of witnesses or production of evidence. The Workers' Compensation Judge on his/her own motion at any conference may order the production of discoverable material and make any other order facilitating discovery. Impeachment evidence shall not be discoverable material and a party shall not be required to disclose impeachment evidence, including but not limited to witnesses, documents, photographs or films. Copies of discovery documents are to be mailed to all parties by certified mail, return receipt requested, and shall not be filed in the record of the proceedings unless required pursuant to Louisiana Code of Civil Procedure Article 1474(C) or ordered by the Workers' Compensation Judge.

Interrogatories propounded pursuant to Louisiana Code of Civil Procedure Article 1457 or deposition by written questions, pursuant to Louisiana Code of Civil Procedure Article 1448 shall not exceed twenty-five (25) in number, including subparts and the interrogatories must be relevant to the current dispute as defined by the pleadings or at the informal conference. The Workers' Compensation Judge, in his/her discretion, may by written order enlarge the number of interrogatories to be propounded. Any such request shall be by written motion directed to the Workers' Compensation Judge who has been assigned the case, and shall have attached all discovery documents which are to be propounded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2, 1310.14, and 1310.15.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation, promulgated LR 16:297 (April 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262 (March 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March, 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

**§2143. Medical Evidence and Affidavits**

Expert medical or rehabilitation testimony may be admitted by:

(1) Reports of any health care provider certified as a true copy in accordance with the Louisiana Revised Statutes 13:3715.1

(2) Deposition;

(3) Oral examination in open court proceedings; however, no more than two physicians may present testimony for either party except by order of the Workers' Compensation Judge; or

(4) Any other manner provided by law.

The Office, taking into consideration that it is costly and time-consuming to have physicians appear at the time of hearing for the purpose of giving live testimony, encourages the production of medical evidence by report or deposition.

Within ten (10) days of receiving a copy of the other party's certified medical report, a party-recipient shall advise the Workers' Compensation Judge in writing if there is an objection to the admission of the report in evidence. A copy of the objection shall be mailed to all parties of record in the suit. Unless the Workers' Compensation Judge and the other parties are timely notified of the objection, the party-recipient of the report shall be deemed to have waived the right to object and the report shall be admitted into evidence for all purposes at the trial. When a timely objection is received, the Workers' Compensation Judge may set a hearing on the motion, or rule on the matter at the trial on the merits. The Workers' Compensation Judge further has the discretion to order a deposition of the doctor if necessary to clarify a report or to obtain additional information, during the discovery period or at the trial on the merits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.2, 1124.1, 1125, and 1127.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by the Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

**§2145. Withheld Medical Report**

When the medical records or reports of any physician have been withheld from a party who has made written request for them, the testimony or records of the health care provider may be excluded by the Workers' Compensation Judge and a civil penalty and attorney fees as provided in Louisiana Revised Statute 23:1125 may be assessed.



AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1125.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by the Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2147. Determination of Medical Costs**

The determination of all medical reimbursement shall be based upon the most current reimbursement schedule adopted by the Director of the Office of Workers' Compensation. Every attempt to resolve disputes over medical reimbursement shall be made by applying said schedule(s).

Disputes as to the necessity and advisability of proposed or already performed medical care or services are premature unless and until the parties have complied with the utilization review procedures. Such premature disputes will be dismissed without prejudice by the Workers' Compensation Judge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1142 and 1314.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by the Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2149. Objections to Evidence**

Except as otherwise provided in Title 23 or by these rules, objection to any evidence shall be governed by the Louisiana Code of Evidence and Code of Civil Procedure.

An objection to testimony offered by deposition must be interposed either at the time the deposition is offered into evidence or at the deposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by the Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

**§2150. Subpoenas**

A. Subpoenas issued in connection with any workers' compensation matter shall be served by the party requesting issuance of the subpoena, and may be served by certified mail return receipt requested or any other manner provided by law. Proof of service shall be the responsibility of the party requesting the subpoena. Once issued and served, a subpoena may be cancelled by the requesting party only after written notice to the opposing side. It shall be the responsibility of the requesting party to provide written notification of cancellation to all opposing parties as well as the person under subpoena.

B. In order to be enforceable, subpoenas for hearing shall be served seven (7) days prior to the scheduled hearing date; subpoenas to compel attendance of medical experts shall be issued fourteen (14) days prior to hearing. Subpoenas for hearing may be issued after expiration of these time limits only by leave of court for good cause shown.

C. No official of the Social Security Administration shall be subject to subpoena under these rules.

D. When it is necessary for any party to request medical information concerning a worker from the Social Security Administration, that request shall be made on Form LDOL-WC-1006, and shall bear the signature of the worker evidencing the worker's consent to the release of this information, or shall have attached a certified copy of the worker's signature as shown on the disputed claim form LDOL-WC-1008, authorizing release of medical information.

E. No independent medical examiner who has filed a report in accordance with the provisions of Section 2142(E) of these rules shall be subject to subpoena.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

**SUBCHAPTER E. MOTIONS AND CONTRADICTORY HEARINGS****§2151. Disqualification of Workers' Compensation Judge**

Any party who feels that he cannot receive a fair and impartial hearing from the Workers' Compensation Judge to whom the matter is assigned shall make written motion requesting such Workers' Compensation Judge to withdraw from the case. That application must set forth specific grounds in accordance with Louisiana Civil Code of Procedure Article 151. The Workers' Compensation Judge

may withdraw without further proceedings and immediately refer the matter to the Workers' Compensation Chief Judge for reassignment; otherwise, the motion shall be heard at a contradictory hearing before the Workers' Compensation Chief Judge or a designee of the Chief Judge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2, 1310.5 and 1310.6.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by the Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

#### **§2153. Motion or Rule Day**

A. Each district office shall designate a specific day of the week for the hearing of rules, motions, exceptions and arguments. A list of the rule days for each district shall be available in any district office.

B. The Workers' Compensation Judge may require the parties to submit briefs in connection with any exception, rule, or motion.

C. The memorandum submitted in support of a motion for summary judgment shall contain:

1. A list of the essential legal elements necessary for the mover to be entitled to judgment;
2. a list of the uncontested facts which prove those elements;
3. as to each fact above, a copy of the document or portion thereof containing proof of the fact.

D. The memorandum submitted in opposition to motion for summary judgment shall contain:

1. A list of the material facts which it is contended are in dispute;
2. as to each fact above, a copy of the document or portion thereof containing the contradictory information.

E. In advance of the date set for the hearing of an exception, motion or rule, any counsel may notify the Court that he waives his appearance and is willing to submit the matter on briefs. At the time set for the hearing, any counsel may waive oral argument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

**§2155. Motion for New Trial**

No motion for new trial will be entertained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2, and 1310.6.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

**SUBCHAPTER F. PRETRIAL CONFERENCE AND INSERTS****§2157. Pretrial Procedure**

A. Unless otherwise provided herein or by law, no suit requiring a trial on the merits may be assigned except at pretrial conference.

B. Seven (7) days prior to the scheduled pretrial conference, each party to the dispute shall file a pretrial statement with the appropriate district office and shall certify thereon that a copy has been mailed to all other parties.

C. Each Pretrial Statement shall be signed by the party or counsel preparing it and shall set forth:

1. Proposed stipulations.
2. Issues to be litigated at the hearing.
3. Contentions (including affirmative defenses).
4. A list and brief description of all exhibits to be offered into evidence identified by the exhibit number to be used at trial. Exhibits to be used for impeachment or rebuttal need not be included on the list. Proposed stipulations as to exhibit authenticity and/or admissibility shall be noted on the exhibit list. Medical reports should be prefaced by a table of contents identifying reports and records by author and date should be arranged in chronological order.

5. A list of witnesses each party may call and a short statement as to the nature but not to the content of their testimony, and whether their testimony will be offered live or by deposition. Except for the witnesses listed, no other witnesses may be called to testify except for good cause shown. This requirement shall not apply to impeachment and rebuttal witnesses.

6. Documentary Evidence sought but not yet obtained.
7. Depositions to be taken.
8. Prospects for settlement, if any explored.
9. Estimated length of hearing.
10. Certificate of service of the pretrial statement on all opposing parties.

D. Counsel who have prepared and submitted a pretrial statement to the Workers' Compensation Court shall attend the pretrial conference unless permission is granted by the Court for substitute counsel to appear. Any substitute counsel permitted by the Court to attend the conference shall be knowledgeable of all aspects of the case and shall possess the necessary authority to commit his client or associate regarding changes, stipulations, compromise/settlements, and trial dates.

E. The trial date selected for the case should not be more than 60 days from the date of the pretrial conference.

F. At the conclusion of the pretrial conference, the Workers' Compensation Judge shall set the case for trial and the pretrial statement shall be filed in the suit record. Notice of the setting shall be mailed to each party.

G. The Workers' Compensation Court, upon its own motion, or upon the request of any party and for cause shown, may waive all or any part of the requirements of this Rule and assign a case for trial upon the merits at an earlier date.

H. In the event there is any impediment to the holding of a pretrial conference or a dispute arises between or among counsel relative to whether or not a case qualifies for a pretrial conference under this Rule, a status conference may be requested for the purpose of resolving the matter and/or for rendition of an appropriate order to expedite the processing of the case. If appropriate, the Worker's Compensation Court will schedule the status conference with due notice to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1, 1310.2, and 1310.6.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation, promulgated LR 16:297 (April 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262 (March 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation LR 19:350 (March, 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

## **SUBCHAPTER G. TRIAL**

### **§2158. Trial of Disputed Issues; Continuance**

A. Only those issues listed in the Pretrial Statements of the parties shall be litigated at trial. No new issues shall be raised except by order of the Workers' Compensation Judge for good cause shown.

B. No continuances shall be granted for the absence of a subpoenaed witness if the subpoena was not issued in accordance with Section 2150 of these rules.

C. No continuance will be entertained based upon a conflict in the schedule of any party or attorney if the conflict arose after the date of the pre-trial conference, except for good cause shown or in cases of criminal assignments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

#### **§2159. Cases or Other Matters Under Advisement**

A case or other matter shall be considered as having been fully submitted for decision immediately upon the conclusion of trial or hearing. All testimony, depositions, documents and evidence shall be introduced on or prior to the day of trial. In instances where the Workers' Compensation Court allows briefs, the parties shall be allowed a maximum of five (5) working days within which to file concurrent briefs.

If a transcript of the testimony is ordered by the Workers' Compensation Court due to the appointment of a successor judge, it shall be filed within thirty days of the appointment, and the case or matter shall not be considered as fully submitted until the reporter files the transcript.

When necessary, for good cause shown, one extension may be granted by the Workers' Compensation Judge not to exceed an additional fifteen days for filing of the transcript.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

### **SUBCHAPTER H. APPEALS**

#### **§2161. Appeals**

All appeals shall be taken in accordance with the procedures set out in the Louisiana Code of Civil Procedure and the relevant rules of the appropriate circuit court of appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.5.

HISTORICAL NOTE: Adopted by the Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by Louisiana Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

## **SUBCHAPTER I. SPECIAL DISPUTES**

### **§2163. Request for Modification**

Any party to the claim may apply for modification pursuant to Louisiana Revised Statute 23:1310.8 by filing a motion, with a Form LDOL-WC-1008. If the original decision or award was made by a District Court Judge, the party seeking the modification shall furnish the Workers' Compensation Judge with the appropriate evidence and documents from the district proceedings. The parties should rely upon the testimony of the health care providers who have examined the employee and testified at the time of the previous award. The health care provider's reports or testimony at the subsequent hearing must show that the health care provider was the health care provider at the time of the previous award or has personal knowledge of employee's condition at that time, or it must show that the health care provider has examined reports, X-rays and/or any other medical data referring to employee's condition at the time of the previous award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.8.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

### **§2165. Disputed Counsel Fees**

When a dispute arises among several counsels as to the identity of claimant's counsel of record, or when several successive counsels lay claim to a fee in the same case, the Workers' Compensation Judge shall decide the issues raised and allocate the fee allowed in proportion to the services rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.2.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by

Louisiana Department of Employment and Training, Office of Workers' Compensation Administration. Admended by Louisiana Department of Labor, Office of Workers' Administration, LR 19:350 (March 1993).

#### **§2167. Social Security Offset**

A. Where a request for reverse offset pursuant to LSA-R.S. 23:1225 is made in connection with a disputed claim, it shall be made by filing Form LDOL-WC-1008 or by responsive pleading. After a determination of permanent and total disability and calculation of the offset on form LDOL-WC-1004, the Workers' Compensation Judge shall issue an order on form LDOL-WC-1005(B) recognizing the entitlement to the offset for social security benefits from the date of judicial demand, and setting the amount of the offset.

B. When workers' compensation benefits are being paid and are not disputed, a request for reverse offset pursuant to LSA-R.S. 23:1225 may be made by motion on form LDOL-WC-1005(A) or by letter, filed in the appropriate district office. When properly filed, the motion or letter requesting reverse offset shall be granted ex parte from date of filing. Upon receipt of such a request the district office shall request information concerning receipt of social security benefits from the social security administration and shall calculate the amount of any offset on form LDOL-WC-1004. No fee shall be charged in connection with a request made under this subsection.

C. No unilateral offset shall be recognized by this office after March 20, 1993.

D. Information concerning receipt of social security benefits and the amounts thereof shall be obtained only by personnel of the Office of Workers' Compensation on Form LDOL-WC-1004, which shall be properly executed by an official designated by the Social Security Administration.

E. No official of the Social Security Administration shall be subject to subpoena under these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

#### **§2168. Financial and Compliance Hearings**

A. Hearings on financial and compliance appeals held pursuant to LSA-R.S. 23:1171 shall be held in an expedited fashion within 15 days of the filing of the appeal, and shall be conducted in accordance with the provisions of the Administrative Procedures Act.



B. No suspensive appeal of a determination of the financial and compliance officer will be entertained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

## **SUBCHAPTER J. UNDISPUTED CLAIMS AND EX PARTE MOTIONS**

### **§2169. Joint Petition Settlements**

A lump sum or compromise settlement shall be presented to the Workers' Compensation Judge for approval by Form LDOL-WC-1011 and joint petition of the parties. The employer/insurance carrier must also submit Form LDOL-WC-1007 if it has not been previously filed with the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1272, 1274, 1310.1, 1310.2, and 1310.3.

HISTORICAL NOTE: Adopted by the Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).

### **§2171. Reserved**

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.8.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262 (March, 1991), amended by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993), Amended by the Department of Labor, Office of Workers' Compensation, LR 20:1295 (November 1994).

### **§2173. Withdrawal of Counsel**

When an attorney seeks to obtain an ex parte order to withdraw as counsel for a party, he shall include in his application a statement that he has given written notice to the party he was previously representing, that he is no longer of counsel to him and of the status of the case on the court's docket. A copy of such written notice shall be attached to the application for the ex parte order for withdrawal. An attorney who has been permitted by ex parte order to withdraw shall give notice of same to all parties.

Counsel of record who withdraws prior to submission of the case, and desires to assert a claim for fee, must attach a statement to that effect and set forth the period of time during which the plaintiff was under his or her representation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and 1310.2.

HISTORICAL NOTE: Adopted by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 16:297, (April, 1990), Repromulgated by the Department of Employment and Training, Office of Workers' Compensation Administration, LR 17:262, (March, 1991), amended by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 19:350 (March 1993).